

GPO BOARD OF CONTRACT APPEALS ALLOWS UNABSORBED OVERHEAD COSTS AFTER TERMINATION FOR CONVENIENCE

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From time to time printers will receive a termination for the convenience of the government on a jacket or print order which has already been issued. On a "T for C" the GPO has always taken the position that it is not liable to pay losses due to unabsorbed overhead. "Unabsorbed overhead" basically represents fixed costs, including fixed labor costs, which the printer could not absorb by putting other work on the press when the government job was terminated.

In the appeal of *New South Press & Associates, Inc.*, GPO BCA 14-92, (1996) GPO's Board of Contract Appeals ruled for the first time that unabsorbed overhead resulting from idle capacity which occurred despite the contractor's effort to find replacement work, was a recoverable cost following the termination for convenience of a print order on a requirements contract.

New South had received a print order on a term contract. It began production of the work and completed the prepress phase. Shortly before going on press, the GPO terminated order and the contract for the convenience of the government. New South submitted costs for work it had performed, and the GPO agreed to pay those costs. New South also submitted a claim for unabsorbed overhead representing idle facilities and equipment time which it was not able to fill or book after the termination for convenience. The GPO refused to pay the unabsorbed overhead. On appeal, New South presented detailed records showing not only its downtime, but also the actual costs thereof based upon accounting records. The Board of Contract Appeals ruled that New South was entitled to compensation for unabsorbed overhead which arose from continuing fixed costs which could not be absorbed through other work.

The Board's ruling specifically related to "requirements" contracts, which would include almost all GPO programs. Although the same theory should apply in the case of a fixed price contract, such as a one-time jacket purchase, the New South decision leaves that issue unresolved.

The lesson that GPO vendors should learn from the decision in New South is that if a job is terminated for the convenience of the government, they should carefully evaluate losses they suffered due to unabsorbed overhead and idle press and facilities time which occurred between the termination and the time they were able to put new work on the press. Rules involving unabsorbed overhead are complex -- analyzing and presenting a claim usually requires help from your lawyer and accountant. If you would like a full copy of the opinion, call (717) 261-0998 -- Fred Antoun.

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